



## TEXAS DEPARTMENT OF INSURANCE

### Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)

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## MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

### GENERAL INFORMATION

**Requestor Name**

Eng's Pharmacy

**Respondent Name**

Clarendon National Insurance

**MFDR Tracking Number**

M4-14-2241-01

**Carrier's Austin Representative**

Box Number 19

**MFDR Date Received**

January 7, 2014

### REQUESTOR'S POSITION SUMMARY

**Requestor's Position Summary:** "no payment after two attempts"

**Amount in Dispute:** \$508.20

### RESPONDENT'S POSITION SUMMARY

**Respondent's Position Summary:** "Requestor seeks review of pharmacy bills for service dates 8/23/2013 and 9/19/2013. Carrier does not show receipt of the disputed billing or the purported request for reconsideration. It appears that Requestor incorrectly submitted its bills to a prior TPA, North American Risk Services. Seabright Insurance Company became the TPA for this Carrier effective November 1, 2013."

**Response Submitted by:** Flahive, Ogden & Latson

### SUMMARY OF FINDINGS

| Dates of Service   | Disputed Services    | Amount In Dispute | Amount Due |
|--------------------|----------------------|-------------------|------------|
| August 23, 2013    | Tramadol HCl tablets | \$89.50           | \$89.49    |
| August 23, 2013    | Meloxicam tablets    | \$41.30           | \$41.26    |
| September 19, 2013 | Tramadol HCl tablets | \$191.70          | \$191.65   |
| September 19, 2013 | Meloxicam tablets    | \$185.70          | \$185.68   |

### FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and applicable rules of the Texas Department of Insurance, Division of Workers' Compensation.

**Background**

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §102.4 provides the presumption of the date a communication is sent.
3. 28 Texas Administrative Code §133.20 sets out the procedures for submitting a medical bill.
4. 28 Texas Administrative Code §133.2, effective July 1, 2012, 37 TexReg 2408, provides definitions for terms

related to medical billing for this date of service.

5. 28 Texas Administrative Code §133.210 sets out the procedures for medical documentation.
6. 28 Texas Administrative Code §133.240, effective July 1, 2012, 37 TexReg 2408, sets out the procedures for payment or denial of a medical bill for this date of service.
7. 28 Texas Administrative Code §134.503 sets out the fee guidelines for pharmaceutical services.
8. Submitted documentation did not include explanations of benefits.

### Issues

1. What are the services in dispute?
2. Did Eng's Pharmacy submit medical bills for the services in question in accordance with 28 Texas Administrative Code §133.20?
3. Did Clarendon National Insurance take final action to pay, reduce, or deny the services in question?
4. Is Eng's Pharmacy entitled to reimbursement for the services in question?

### Findings

1. Eng's Pharmacy is seeking reimbursement of \$508.20 for the following:
  - Tramadol HCl 50 mg, NDC 65162062710, 82 tablets, dispensed August 23, 2013
  - Meloxicam 15 mg, NDC 61442012710, 7 tablets, dispensed August 23, 2013
  - Tramadol HCl 50 mg, NDC 65162062710, 180 tablets, dispensed September 19, 2013
  - Meloxicam 15 mg, NDC 68382005101, 30 tablets, dispensed September 19, 2013

These are the services considered for this dispute.

2. 28 Texas Administrative Code §133.20(a) and (b) require a health care provider to submit a medical bill **to the insurance carrier within 95 days of the date of service** with few exceptions. Eng's Pharmacy submitted the following documentation as evidence of submission of bills for the services in question:
  - A fax Transmission Verification Report dated August 27, 2013, indicating successful transmission to North American Risk Services related to the billing for date of service August 23, 2013.
  - A fax Transmission Verification Report dated September 20, 2013, indicating successful transmission to North American Risk Services related to the billing for date of service September 19, 2013.

28 Texas Administrative Code §102.4(h)(1) states that unless the great weight of evidence finds otherwise, written communications are considered sent on the date they are received when sent by fax. The documentation supports that the documentation was submitted within 95 days from the dates of service.

Flahive, Ogden & Latson argued on behalf of Clarendon National Insurance that "It appears that Requestor incorrectly submitted its bills to a prior TPA, North American Risk Services. Seabright Insurance Company became the TPA for this Carrier effective November 1, 2013." The evidence presented by Eng's Pharmacy supports that bills for the services in question were submitted prior to November 1, 2013. Flahive, Ogden & Latson provided no documentation to support that North American Risk Services was not an agent of Clarendon National Insurance at the time of submission.

28 Texas Administrative Code §133.210(e) states, "It is the insurance carrier's obligation to furnish its agents with any documentation necessary for the resolution of a medical bill. The Division considers any medical billing information or documentation possessed by one entity to be simultaneously possessed by the other." Therefore, because the bills for the services in question were possessed by an agent of the insurance carrier, they are considered possessed by the insurance carrier.

The division concludes that Eng's Pharmacy submitted the bills for the services in question to the insurance carrier within 95 days from the dates of service, in accordance with 28 Texas Administrative Code §133.20.

3. 28 Texas Administrative Code §133.240(a) states:

An insurance carrier shall take final action after conducting bill review on a complete medical bill, or determine to audit the medical bill in accordance with §133.230 of this chapter (relating to Insurance Carrier Audit of a Medical Bill), not later than the 45th day after the date the insurance carrier received a complete medical bill. An insurance carrier's deadline to make or deny payment on a bill is not extended as a result of a pending request for additional documentation.

Final action is defined by 28 Texas Administrative Code §133.2(5) as:

- (A) sending a payment that makes the total reimbursement for that bill a fair and reasonable reimbursement in accordance with §134.1 of this title (relating to Medical Reimbursement); and/or
- (B) denying a charge on the medical bill.

Review of the submitted documentation does not support that Clarendon National Insurance took final action on the medical bills in question in accordance with 28 Texas Administrative Code §133.240. Because Clarendon National Insurance failed to raise any defenses for the disputed services, the services will be reviewed in accordance with applicable rules and fee guidelines.

4. 28 Texas Administrative Code §134.503(c) states:

The insurance carrier shall reimburse the health care provider or pharmacy processing agent for prescription drugs the lesser of:

- (1) the fee established by the following formulas based on the average wholesale price (AWP) as reported by a nationally recognized pharmaceutical price guide or other publication of pharmaceutical pricing data in effect on the day the prescription drug is dispensed:
  - (A) Generic drugs:  $((\text{AWP per unit}) \times (\text{number of units}) \times 1.25) + \$4.00$  dispensing fee per prescription = reimbursement amount;
  - (B) Brand name drugs:  $((\text{AWP per unit}) \times (\text{number of units}) \times 1.09) + \$4.00$  dispensing fee per prescription = reimbursement amount;
  - (C) When compounding, a single compounding fee of \$15 per prescription shall be added to the calculated total for either paragraph (1)(A) or (B) of this subsection; or
- (2) notwithstanding §133.20(e)(1) of this title (relating to Medical Bill Submission by Health Care Provider), the amount billed to the insurance carrier by the:
  - (A) health care provider; or
  - (B) pharmacy processing agent only if the health care provider has not previously billed the insurance carrier for the prescription drug and the pharmacy processing agent is billing on behalf of the health care provider.

Reimbursement for the services in question are calculated as follows:

| Date    | Drug         | NDC & Type  | Price/ Unit | Total Units | AWP Formula §134.503(c)(1)                           | Billed Amt §134.503 (c)(2) | Lesser of (c)(1) and (c)(2) |
|---------|--------------|-------------|-------------|-------------|--|----------------------------|-----------------------------|
| 8/23/13 | Tramadol HCl | 65162062710 | \$0.834     | 82          | $(0.834 \times 82 \times 1.25) + \$4.00 = \$89.49$   | \$89.50                    | \$89.49                     |
| 8/23/13 | Meloxicam    | 61442012710 | \$4.2587    | 7           | $(4.2587 \times 7 \times 1.25) + \$4.00 = \$41.26$   | \$41.30                    | \$41.26                     |
| 9/19/13 | Tramadol HCl | 65162062710 | \$0.834     | 180         | $(0.834 \times 180 \times 1.25) + \$4.00 = \$191.65$ | \$191.70                   | \$191.65                    |
| 9/19/13 | Meloxicam    | 68382005101 | \$4.8449    | 30          | $(4.8449 \times 30 \times 1.25) + \$4.00 = \$185.68$ | \$185.70                   | \$185.68                    |
|         |              |             |             |             |  | Total                      | \$508.08                    |

The total reimbursement for the disputed services is \$508.08. This amount is recommended.

### **Conclusion**

For the reasons stated above, the Division finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is \$508.08.

## **ORDER**

Based on the submitted information, pursuant to Texas Labor Code Sec. 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services in dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of \$508.08, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this Order.

### **Authorized Signature**

|                    |  |                                 |
|--------------------|--|---------------------------------|
| _____<br>Signature | Laurie Garnes<br>_____<br>Medical Fee Dispute Resolution Officer | March 16, 2017<br>_____<br>Date |
|--------------------|--|---------------------------------|

## **YOUR RIGHT TO APPEAL**

Either party to this medical fee dispute has a right to seek review of this decision in accordance with 28 Texas Administrative Code §133.307, 37 *Texas Register* 3833, applicable to disputes filed on or after June 1, 2012.

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the Division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the Division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MFDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**